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Attorneys for Defendant
RETAIL SERVICES & SYSTEMS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD BELL, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

RETAIL SERVICES & SYSTEMS, INC.,

Defendant.

Case No.

(Alameda County Superior Court
Case No. RG18900192)

**DEFENDANT RETAIL SERVICES &
SYSTEMS, INC.'S NOTICE OF
REMOVAL UNDER 28 U.S.C. § 1441(a)
TO FEDERAL COURT**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA AND TO PLAINTIFF RICHARD BELL AND HIS ATTORNEYS
OF RECORD:

PLEASE TAKE NOTICE that Defendant RETAIL SERVICES & SYSTEMS, INC.
("Defendant"), by its undersigned attorneys, hereby removes to the United States District Court
for the Northern District of California, the above-captioned matter of *RICHARD BELL v. RETAIL
SERVICES & SYSTEMS, INC.* which is currently pending in the Superior Court of the State of
California for the County of Alameda, Case No. RG18900192. This Court has original
jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332, and may remove this action
from the Superior Court of California, County of Alameda, where it was initiated. As set forth
below, removal is proper under two independent bases: (1) federal question jurisdiction; and

(2) federal jurisdiction pursuant to diversity of citizenship.

I. PROCEDURAL BACKGROUND

1. State Court Action: On April 10, 2018 Plaintiff filed a verified Class Action Complaint ("Complaint" or "State Court Action") in the Superior Court of California, County of Alameda, entitled *RICHARD BELL, on behalf of himself and all other similarly situated v. RETAIL SERVICES & SYSTEMS, INC.*, Case No. RG18900192. The Complaint included causes of action for violations of the Unruh Act Civil Rights Act, Cal. Civ. Code § 51, *et seq.* and the California Disabled Persons Act, Cal. Civ. Code § 54, *et seq.* Plaintiff further alleges that "a violation of the [Americans With Disabilities Act] ADA is a violation of the Unruh Act (Pltf's Compl. ¶ 41). A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit A.

2. State Court Documents: Pursuant to 28 U.S.C. § 1446(a), Defendant has included with this Notice of Removal "a copy of all process, pleadings, and orders served upon such defendant...in such action." These documents are attached hereto and incorporated by reference:

- a. Plaintiff's Class Action Complaint For: (1) Violations of the Unruh Act, California Civil Code § 51, *et seq.* - Exhibit A;
- b. Summons filed April 10, 2018 - Exhibit B;
- c. Civil Case Cover Sheet and Civil Case Cover Sheet Addendum filed April 10, 2018 - Exhibit C;
- d. Notice of Hearing dated April 10, 2018 and served by mail on April 11, 2018 - Exhibit D; and
- e. Proof of Service of Summons filed on April 24, 2018 - Exhibit E.

3. Service: The first date on which Defendant received a copy of the Complaint was April 12, 2018, when it was served with a copy of the state court Complaint and Summons. A true and correct copy of the Summons personally served on Defendant on April 12, 2018, is attached hereto as Exhibit B.

4. Timeliness of Removal: Defendant was first served with Plaintiff's Complaint on April 12, 2018. This Notice of Removal is timely because Defendant filed it "within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading,

1 motion, order or other paper from which it may first be ascertained that the case is one which is or
2 has become removable." 28 U.S.C. § 1446(b)(3).

3 5. Venue: Under 28 U.S.C. § 1441(a), venue of this removed action lies in the United
4 States District Court for the Northern District of California, in that the state court action was filed
5 and is pending in the Superior Court of the State of California in and for the County of Alameda,
6 which is in this judicial district.

7 6. Intradistrict Assignment: Assignment to the San Francisco or Oakland Division of
8 the United States District Court for the Northern District of California is proper under 28 U.S.C.
9 § 1441(a) and Civil Local Rule 3-2(c)-(d) because the state court action was filed and is pending
10 in the County of Alameda.

11 7. Filing With State Court and Service On Plaintiff: Written Notice and Proof of
12 Service of the filing of this Notice of Removal by Defendant will be served upon all parties as
13 required by law. In addition, a copy of this Notice of Removal will be filed with the Clerk of the
14 Court for the Superior Court of the County of Alameda.

15 II. NATURE OF THE SUIT

16 8. Federal Question Jurisdiction: This action is a civil action for which this court has
17 original jurisdiction pursuant to 28 U.S.C. § 1331 and is one which may be removed pursuant to
18 28 U.S.C. § 1441(a) and 28 U.S.C. § 1443, in that it appears from the Complaint that Plaintiff has
19 filed a civil rights action, and his claims are founded on a claim or right arising under the laws of
20 the United States.

21 More specifically, it appears from the Complaint that this is a civil rights action alleging
22 discrimination claims based on violations of the Americans with Disabilities Act, 42 U.S.C.
23 § 12182 *et seq.* (See Pltf's Compl. ¶¶ 24, 31, 33-36, 42, 56; Relief ¶ C).

24 9. Diversity of Citizenship Jurisdiction: This action is a civil action of which this
25 Court has original jurisdiction under 28 U.S.C. § 1332(c) and is one that may be removed to this
26 Court from the Superior Court of the State of California, County of Alameda, where the action
27 was initiated. This action may be removed by Defendant pursuant to the provisions of 28 U.S.C.
28 §§ 1441(a) and 1446(a) because it is a civil action between citizens of different states and the

1 matter in controversy as alleged by Plaintiff exceeds the sum of \$75,000, exclusive of interest and
2 costs. Federal district courts have original jurisdiction over all civil actions where the matter in
3 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between
4 citizens of different states. 28 U.S.C. § 1332(a).

5 10. Citizenship: Defendant is informed and believes that Plaintiff is a citizen of the
6 state of California. Under 28 U.S.C. § 1332(c)(1), "a corporation shall be deemed to be a citizen
7 of every State and foreign state by which it has been incorporated and of the State or foreign state
8 where it has its principal place of business." Here, Defendant is a citizen of the state of
9 Pennsylvania by virtue of being organized under the laws of that state. Under the "nerve center"
10 test, Defendant is also a citizen of the state of Maryland because its corporate headquarters, where
11 "the corporation's high level officers direct, control, and coordinate the corporation's activities" is
12 located in North Bethesda, Maryland. See *Hertz Corp. v. Friend*, 559 U.S. 77, 80-83 (2010)
13 (holding that the "nerve center" test is the only appropriate test for determining the location of a
14 principal place of business). As such, complete diversity exists between the parties pursuant to 28
15 U.S.C. § 1332.

16 11. Amount in Controversy: The amount in controversy requirement of 28 U.S.C.
17 § 1332 is met in this case. Under recent United States Supreme Court guidance, a defendant's
18 removal need include only a plausible allegation that the amount in controversy exceeds the
19 jurisdictional threshold; the notice need not contain evidentiary submissions. *Dart Cherokee*
20 *Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553 (2014). Additionally, courts may
21 consider whether it is facially apparent from the Complaint that the jurisdictional amount is in
22 controversy. See *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997);
23 *Conrad Assoc. v. Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998).
24 Defendant alleges that the amount in controversy exceeds the jurisdictional threshold, as explained
25 below.

26 12. Requested Damages: The Complaint alleges violations of the Unruh Civil Rights
27 Act (Pltf's Compl. ¶ 40). Section 52 of the Unruh Civil Rights Act provides a damage remedy for
28 violations of Section 51 in part as follows: "Whoever denies, aids or incites a denial, or makes

1 any discrimination or distinction contrary to Section 51 ... is liable for each and every offense for
 2 the actual damages, and any amount that may be determined by a jury or a court sitting without a
 3 jury ... up to a maximum of three times the amount of actual damages but in no case less than four
 4 thousand dollars” *Hubbard v. Rite Aid Corp.*, 433 F. Supp. 2d 1150, 1170 (S.D. Cal. 2006).
 5 Using the \$4,000 statutory minimum and assuming, conservatively, that Plaintiff is seeking to
 6 recover statutory damages based on 15 alleged visits/deterred visits to Defendant's stores (see
 7 Pltf's Compl. ¶ 31), then Plaintiff appears to seek to recover \$60,000.00 (15 visits/deterred visits x
 8 \$4,000 in statutory damages for a total of \$60,000.00) for himself only, notwithstanding statutory
 9 damages Plaintiff may later attempt to seek for other alleged putative class members.

10 The Complaint also alleges violations of The California Disabled Persons Act ("DPA")
 11 (Pltf's Compl. ¶ 51). Under the remedial provisions of the DPA, "disabled persons asserting a
 12 violation may obtain an award of damages—albeit, with a \$1,000 minimum limit, lower than that
 13 set forth in the Unruh Civil Rights Act—and an attorney fee award." *Flowers v. Prasad*, 238 Cal.
 14 App. 4th 930, 939 (2015). The DPA also authorizes injunctive relief "to correct violations of DPA
 15 standards." *Id.* at 940. Although Civil Code section 54.3(c) bars simultaneous recovery of
 16 damages under the Unruh Civil Rights Act and the DPA, the amount Plaintiff seeks appears to
 17 satisfy the amount-in-controversy threshold by factoring in the statutory damages under the DPA,
 18 times multiple stores, plus Plaintiff's attorneys' fees for himself and the alleged putative class.

19 Plaintiff also seeks to recover his attorneys' fees and costs under the Unruh Civil Rights
 20 Act. Attorneys' fees are properly considered in the analysis of the amount in controversy. See
 21 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for attorneys' fees are
 22 to be included in amount in controversy, regardless of whether award is discretionary or
 23 mandatory). Prosecuting an individual Unruh Act claim can lead to a recovery of more than
 24 \$75,000 in attorneys' fees. See *Engel v. Worthington*, 60 Cal. App. 4th 628, 635-36 (1997)
 25 (finding \$80,875 in attorneys' fees for recovering \$250 in Unruh damages to be reasonable).
 26 Further, because Plaintiff's Complaint is filed on behalf of himself and a class of "mobility
 27 impaired/wheelchair bound persons" which Plaintiff believes "can consist of thousands of
 28 members" (Pltf's Compl. ¶¶ 21-22), it is reasonable to infer that Plaintiff intends to allege recovery

1 of more than \$75,000 in attorneys' fees.

2 Thus, the \$75,000 amount-in-controversy threshold is met in this case when combining
3 possible statutory damages under the Unruh Civil Rights Act and "attorneys' fees and costs
4 (including expert fees) and other expenses of the suit" (Pltf's Prayer, ¶ H) for Plaintiff and alleged
5 putative class members.

6 WHEREFORE, Defendant RETAIL SERVICES & SYSTEMS, INC. prays that this Notice
7 of Removal may be accepted as good and sufficient, and that the action may be removed from the
8 Superior Court of the State of California for the County of Alameda, as provided by 28 U.S.C.
9 § 1441, and thereupon to proceed with said civil action as though originally commenced in this
10 Court and for all orders and decrees as may be necessary and appropriate in such cases made and
11 provided.

12
13 DATED: May 14, 2018

HANSON BRIDGETT LLP

14
15 By: /s/ Jerri Kay-Phillips

16 KURT A. FRANKLIN
17 JERRI KAY-PHILLIPS
18 Attorneys for Defendant
19 RETAIL SERVICES & SYSTEMS, INC.
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EXHIBIT A



20901382

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 2 BRODSKY & SMITH, LLC
 3 9595 Wilshire Blvd., Ste. 900
 4 Beverly Hills, CA 90212
 5 Telephone: (877) 534-2590
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7 *Attorneys for Plaintiff*

FILED
ALAMEDA COUNTY

APR 10 2018

CLERK OF THE SUPERIOR COURT
 By 
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ~~LOS ANGELES~~ *Alameda*

9
 10 RICHARD BELL, on behalf of himself
 11 and all others similarly situated,

12 Plaintiff,

13 vs.

14 RETAIL SERVICES & SYSTEMS, INC.,

15 Defendant.

Case No.: **RG18900192***

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATIONS OF THE UNRUH ACT,
 CALIFORNIA CIVIL CODE § 51, *et seq.*
 (2) VIOLATIONS OF THE CDPA,
 CALIFORNIA CIVIL CODE § 54.1, *et*
seq.

JURY TRIAL DEMANDED

BY FAX

17 Plaintiff Richard Bell ("Plaintiff"), by and through his attorneys, alleges the following
 18 based upon personal knowledge as to his own acts, and upon information and belief and his
 19 attorneys' investigation as to all other facts.

20 1. Plaintiff, on behalf of himself and on behalf of a Class of mobility
 21 impaired/wheelchair bound persons, alleges that defendant Retail Services & Systems, Inc.
 22 ("Total Wine & More" or "Defendant"), is in violation of California's anti-discrimination state
 23 statutes, the Unruh Civil Rights Act, California Code § 51 *et seq.* ("Unruh Act"), and the
 24 California Disabled Persons Act, California Civil Code § 54 *et seq.* ("CDPA").

25 2. Plaintiff seeks statutory damages and reasonable attorneys' fees and costs on
 26 behalf of himself, and injunctive relief on behalf of the putative Class who has patronized or
 27 would like to patronize the stores identified below.

STATUTORY BACKGROUND

3. Both the CDPA, which was enacted in 1968, and the Unruh Act, which was amended in 1987 to cover persons with disabilities, prohibit discrimination on the basis of disability and require full and equal access to services, facilities and advantages of public accommodations.

4. All buildings constructed or altered after July 1, 1970, must comply with standards governing the physical accessibility of public accommodations.

5. From December 31, 1981 until the present, the standards have been set forth in Title 24 of the California regulatory code (the "California Standards"). In addition to setting forth design and construction standards, the California Standards require public accommodations to maintain in operable working condition those features of facilities and equipment that are required to be accessible to and usable by persons with disabilities. California Standards, § 1101B.3.

6. A violation of a California Standard constitutes a violation of both the CDPA and the Unruh Act. A violation of 42 U.S.C. § 12181, *et seq.*, of the Americans with Disabilities Act ("ADA"), also constitutes a violation of both statutes. Cal. Civ. Code, §§ 51(f) and 54 (c). A prevailing plaintiff is entitled to, among other relief, statutory minimum damages regardless of whether the plaintiff has suffered any actual damages. Cal. Civ. Code, § 54.3.

7. The Unruh Act, Cal. Code, § 51, prohibits discrimination on the basis of disability by "all business establishments of every kind whatsoever."

8. In 1992, the Unruh Act was amended to provide that "violation of the right of any individual under the Americans with Disabilities Act of 1990... shall also constitute a violation of this section. Cal. Civ. Code, § 51(f); *Presta v. Peninsula Corridor Joint Powers Bd.*, 16 F. Supp. 2d 1134, 1135 (N.D. Cal.1998).

9. Despite an extended period of time in which to become compliant, and despite the extensive publicity the CDPA and Unruh Act have received over the years, Defendant continues to discriminate against people who are disabled, in ways that block them from equal access to and use of its stores.

1 PARTIES AND STANDING

2 10. Plaintiff is a citizen of California, is domiciled in Los Angeles, CA and qualifies
3 as an individual with disabilities. Bell is a C5/6 quadriplegic and requires a wheelchair to move
4 about. Plaintiff has visited and patronized Total Wine & More stores within the State of
5 California, and has experienced discrimination at such stores as more fully set forth below.
6 Plaintiff is being deterred from patronizing Total Wine & More but intends to return to these
7 stores for the dual purpose of availing himself of the goods and services offered to the public at
8 such stores, and to ensure that those stores cease evading their responsibilities under state law.

9 11. Plaintiff has been, and continues to be, adversely affected by Defendant's
10 violations of the laws of the State of California. Plaintiff has suffered direct and indirect injury
11 as a result of Defendant's actions and/or omissions as described herein.

12 12. Plaintiff has reasonable grounds to believe that Defendant will continue to subject
13 him and other disabled individuals to discrimination in violation of the laws of the State of
14 California given that the Defendant has failed to bring existing stores into compliance for over
15 twenty (20) years and has allowed new stores to be constructed that are similarly out of
16 compliance.

17 13. Defendant Total Wine & More, at all relevant times to this litigation acted, or
18 failed to act, by and through its officers, representatives, subsidiaries, agents, workers and/or its
19 employees. Total Wine & More is a Pennsylvania corporation with registered agent for service
20 of process located at 103 Yost Blvd., Ste. 101, Pittsburgh, PA 15221.

21 14. Upon information and belief, Defendant operates fifteen (15) stores in the State of
22 California. Defendant's stores that are located in the State of California are required to comply
23 with California state law and be fully accessible to the mobility impaired.

24 JURISDICTION AND VENUE

25 15. This Court has original jurisdiction of the Unruh Act and CDPA claims pursuant
26 to Cal. Civ. Code §§ 51 and 54.

27 16. Venue lies in this district as Defendant is found and/or does substantial business
28 here, and a part of the property that is the subject of the action is so situated.

CLASS ACTION ALLEGATIONS

17. Class actions are certified when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. Cal. Civ. Proc. Code § 382. The California Supreme Court has stated that a class should be certified when the party seeking certification has demonstrated the existence of a “well-defined community of interest” among the members of the proposed class. *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 470 (1981); *see also Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 704 (1967).

18. Class actions are especially valuable in a context such as this one, in which individual damages are modest. It is well settled that Plaintiff need not prove the merits of his action at the class certification stage.

19. Rather, the decision of whether to certify a class is “essentially a procedural one” and the appropriate analysis is whether, assuming the merits of the claims, they are suitable for resolution on a class-wide basis:

As the focus in a certification dispute is on what types of questions common or individual are likely to arise in the action, rather than on the merits of the case, in determining whether there is substantial evidence to support a trial court’s certification order, we consider whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.

Sav-On Drug Markets, Inc. v. Superior Court, 34 Cal.4th 319, 327 (2004) (citations omitted).

20. In addition, the assessment of suitability for class certification entails addressing whether a class action is superior to individual lawsuits or alternative procedures for resolving the controversy. *Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 689.

21. The Class consists of all mobility impaired/wheelchair-bound persons located in the State of California who have patronized the Total Wine & More stores identified herein, who have been, or who were, prior to the filing of the Complaint, denied the full and equal enjoyment of the goods, services, programs, facilities, privileges, advantages and/or accommodations of any of the Total Wine & More stores identified herein (the Class).

1 22. The Class is believed to consist of thousands of members. Upon information and
2 belief, census statistics demonstrate that there are over 150,000 non-institutionalized people
3 sixteen years of age or older in California who use wheelchairs. The members of the Class are
4 so numerous that joinder of all members is impracticable.

5 23. Common questions of law and fact exist as to all members of the Class, and
6 predominate over any questions affecting solely individual members of the Class. Among the
7 questions of law and fact common to the Class are:

8 (a) Whether Defendant provides goods, services, programs, facilities,
9 privileges, advantages, or accommodations to individuals with disabilities in an
10 integrated setting;

11 (b) Whether Defendant's stores have made reasonable modifications in
12 policies, practices, and procedures when such modifications are necessary to afford such
13 goods, services, programs, facilities, privileges, advantages, or accommodations to
14 individuals with disabilities;

15 (c) Whether Defendant has failed to take steps to ensure that individuals with
16 disabilities are not excluded, denied services, segregated, or otherwise treated differently
17 than other individuals because of the absence of auxiliary aids and services;

18 (d) Whether Defendant has failed to remove architectural and communication
19 barriers in existing stores, where such removal is readily achievable and technically
20 feasible, or have failed to make such goods, services, programs, facilities, privileges,
21 advantages, or accommodations available through alternative methods, if removal of the
22 barriers is not readily achievable or technically feasible;

23 (e) Whether violations of the ADA also constitute per se violations of
24 California's anti-discrimination statutes Cal. Civ. Code §§ 51, and 54 *et. seq.*;

25 (f) Whether Defendant has violated and/or continues to violate California's
26 anti-discrimination state statutes identified above by denying equal access to disabled
27 persons at places of public accommodation;
28

1 (g) Whether California's state anti-discrimination statutes identified above
2 provide for a private right of action;

3 (h) Whether California's state anti-discrimination statutes identified above
4 provide for injunctive relief;

5 (j) Whether to recover under the Unruh Act a plaintiff must plead and prove
6 intentional discrimination;

7 (k) Whether a plaintiff must prove intentional conduct to recover under the
8 CDPA; and

9 (l) Whether injunctive relief is available as a cumulative remedy for
10 violations of California's disability access laws regardless of if a plaintiff elects to
11 recover under the Unruh Act or CDPA.

12 24. Plaintiff's claims are typical of the claims of the members of the Class, as
13 Plaintiff and members of the Class sustained and continue to sustain injuries arising out of the
14 Defendant's conduct or omissions in violation of state law as complained of herein. Plaintiff,
15 like all other members of the Class, claim that Defendant has violated California state law by
16 violating the ADA and Title 24 by failing to make its stores accessible to individuals with
17 disabilities and by excluding the Plaintiff, and other similarly situated persons, from full and
18 equal enjoyment of the goods, services, programs, facilities, privileges, advantages and/or
19 accommodations of Defendant's stores, and subjecting Plaintiff to discrimination by failing to
20 provide its facilities and other goods, services, programs, facilities, privileges, advantages and/or
21 accommodations to Plaintiff, as well as other similarly situated persons.

22 25. Plaintiff will fairly and adequately protect the interests of the members of the
23 Class and has retained counsel competent and experienced in class action litigation. Plaintiff has
24 no interests antagonistic to, or in conflict with, those of the Class.

25 26. A class action is superior to other available methods for the fair and efficient
26 adjudication of the controversy since joinder of all members of the proposed Class is
27 impracticable. Furthermore, because the damages suffered by individual Class members may be
28

1 relatively small, the expense and burden of individual litigation make it impossible for individual
2 members of the Class to redress wrongs done to them.

3 27. There will be no difficulty in the management of this action as a class action.
4 Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action as
5 it is likely to avoid the burden which would otherwise be placed upon the judicial system by the
6 filing of thousands of similar suits by individual disabled persons across the State of California.
7 There are no obstacles to the effective and efficient management of the lawsuit as a class action.

8 **TOTAL WINE & MORE STORES OWNED/OPERATED BY DEFENDANT**
9 **IN VIOLATION OF CALIFORNIA'S ACCESS LAWS**

10 28. On October 2, 2017, Plaintiff patronized the Total Wine & More located at 6232
11 Topanga Canyon Blvd., Woodland Hills, CA to purchase red wine and suffered discrimination as
12 a result of being denied full and equal access to the store's parking lot. Plaintiff was deterred
13 from parking in a handicap accessible parking space because the parking lot did not have an
14 adequate number of handicap accessible parking spaces. In addition to not having the minimum
15 required amount of handicap accessible parking spaces, the parking lot also lacked signage to
16 deter the use of handicap spaces by persons that are not disabled. For example, the parking lot
17 did not have additional signage below the symbol of accessibility stating "minimum fine
18 \$250.00," and did not have a warning sign regarding the penalty for unauthorized use of
19 designated disabled parking spaces and where they are towed. As a result, Plaintiff was unable to
20 park in a handicap accessible parking space.

21 29. Thereafter, on October 3, 2017, Plaintiff attempted to resolve this dispute without
22 the need for litigation by providing Defendant with written notice and the opportunity to cure by
23 requesting that Defendant make accessible the 6232 Topanga Canyon Blvd., Woodland Hills,
24 CA location. In his correspondence to the store manager, Plaintiff informed him or her that the
25 store's parking lot is not accessible to him for the above reasons, and asked that these problems
26 be fixed within thirty (30) days. Plaintiff did not seek any monies or statutory damages.

27 30. Plaintiff received no response to his October 3, 2017 letter. As a result, he is now
28 being deterred from patronizing all of Defendant's locations.

31. Plaintiff has retained attorneys to prosecute the claims alleged herein, who in turn, retained professional building experts to investigate, identify and document Defendant's discriminatory barriers. Those investigations, which are still ongoing, have to date identified the stores listed below as being in serious violation of state law as a result of their violations of the California Standards governing the physical accessibility of public accommodations and/or the ADA which results in a violation of both the Unruh Act and CDPA. This information has been disseminated to the Plaintiff providing him with actual notice of the violations at Defendant's stores listed below:

1. 6232 Topanda Canyon Blvd., Woodland Hills, CA
2. 1010 N. Rengstorff Ave., Mountain View, CA
3. 19336 Nordhoff St., Northridge, CA
4. 1505 Hawthorne Blvd., Redondo Beach, CA
5. 2952 El Camino Real, Tustin, CA
6. 394 North Moorpark Rd., Thousand Oaks, CA
7. 3161 Crow Canyon Pl., San Ramon, CA
8. 3250 Buskirk Ave., Pleasant Hill, CA
9. 43484 Boscell Rd., Fremont, CA
10. 72339 Highway 111, Palm Desert, CA
11. 471 South Associated Rd., Brea, CA
12. 5791 Five Star Blvd., Roseville, CA
13. 2121 Arden Way, Sacramento, CA
14. 7707 Laguna Blvd., Elk Grove, CA
15. 24001 El Toro Rd., Laguna Hills, CA

32. Despite receiving notice and an opportunity to cure from Plaintiff, Defendant has refused to address its accessibility violations. The aforementioned violations are ongoing and continue to result in Plaintiff and unnamed mobility impaired class members suffering discrimination as a result of being denied full and equal access to these stores.

33. Defendant has discriminated and is discriminating against Plaintiff, and others similarly situated by failing to, *inter alia*, have accessible facilities, as described below, and required by both the California Standards and by the ADA. The following list describes Defendant's violations in the Total Wine & More stores listed above:

1. **6232 Topanga Canyon Blvd.
Woodland Hills, CA 91367**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating "minimum fine \$250.00." This is a violation of Title 24 Code 1129B.4.

Violation 6

There is no warning sign regarding the penalty for unauthorized use of designated disabled parking spaces and where they are towed. This is in violation of Title 24 Code 1129B.4.

Violation 7

The accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

Violation 8

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

2. **1010 N. Rengstorff Ave.
Mountain View, CA 94043**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 6

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 7

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 8

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

Violation 9

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

**3. 19336 Nordhoff St.
Northridge, CA 91324**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 5

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 7

The dressing/fitting room clothing hooks are not located a maximum of 48" from the floor. This is in violation of Title 24 Code 1110B.1.7; ADAAG – Section 4.35.5.

4. **1505 Hawthorne Blvd.
Redondo Beach, CA 90278**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no warning sign regarding the penalty for unauthorized use of designated disabled parking spaces and where they are towed. This is in violation of Title 24 Code 1129B.4.

Violation 4

The center of the toilet or water closet is 21" from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 5

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 7

1 The auto-dryer in the restroom is located 41" above the floor. This is in violation
2 of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

3 **5. 2952 El Camino Real**
4 **Tustin, CA 92782**

5 **Violation 1**

6 There is not the required number of accessible parking spaces. This is in violation
7 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

8 **Violation 2**

9 There is not the required number of van accessible spaces. This is in violation of
10 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

11 **Violation 3**

12 The rest room door force is 10 lbs. and is not accessible. This is in violation of
13 Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

14 **Violation 4**

15 The mirror in the restroom is 48" from the floor and is not compliant. This is in
16 violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

17 **Violation 5**

18 The soap dispenser in the restroom is located 47" above the floor. This is in
19 violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

20 **Violation 6**

21 The toilet seat cover dispenser in the restroom is located 45" above the floor.
22 This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

23 **6. 394 North Moorpark Rd.**
24 **Thousand Oaks, CA 91360**

25 **Violation 1**

26 There is not the required number of accessible parking spaces. This is in violation
27 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

28 **Violation 2**

There is not the required number of van accessible spaces. This is in violation of
Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The van accessible parking spaces do not have accessible aisles. This is in
violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 4

The restroom door force is 8 lbs. and is not accessible. This is in violation of
Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

7. **3161 Crow Canyon Pl.
San Ramon, CA 94583**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG - Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG - Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG - Section 4.6.4.

Violation 4

The restroom door force is 10 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG - Section 4.13.11(2)(b).

8. **3250 Buskirk Ave.
Pleasant Hill, CA 94523**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG - Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG - Section 4.1.2(5)(b).

Violation 3

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG - Section 4.7.7.

Violation 4

The restroom door force is 11 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG - Section 4.13.11(2)(b).

9. **43484 Boscell Rd.
Fremont, CA 94538**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG - Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

The restroom door force is 10 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**10. 72339 Highway 111
Palm Desert, CA 92260**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**11. 471 South Associated Rd.
Brea, CA 92821**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**12. 5791 Five Star Blvd.
Roseville, CA 95678**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

**13. 2121 Arden Way
Sacramento, CA 95825**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

The restroom door force is 13 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 3

The mirror in the restroom is 41" from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

**14. 7707 Laguna Blvd.
Elk Grove, CA 95758**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**15. 24001 El Toro Rd.
Laguna Hills, CA 92653**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

The restroom door force is 10 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 3

The paper towel dispenser in the restroom is located 50" above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7

37. As a result of that failure to remedy existing barriers to accessibility, Plaintiff and others similarly situated have been denied access to the benefits of the goods, services, programs, facilities and activities at Defendant's stores, and have otherwise been discriminated against and have suffered damages caused by Defendant's accessibility violations. Unless Defendant's stores are brought into compliance, said persons will continue to suffer injury in the future.

(Defendant is in Violation of the Unruh Act)

41. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business

1 establishments of every kind whatsoever within the jurisdiction of the State of California. The
2 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

3 42. Defendant has violated the Unruh Act by, *inter alia*, denying Plaintiff and
4 members of the proposed Class, as persons with disabilities, full and equal accommodations,
5 advantages, facilities, privileges and/or services offered by Defendant. Defendant has also
6 violated the Unruh Act by violating the ADA, as set forth above.

7 43. Defendant has violated the Unruh Act, by *inter alia*, failing to operate its services
8 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
9 nondiscriminatory access to its location.

10 44. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
11 unlawfully denied access to its location and its facilities to individuals with disabilities and acted
12 intentionally and with knowledge of the effect its conduct was having on physically disabled
13 persons.

14 45. Defendant has violated the Unruh Act by violating the California Standards and
15 by violating the rights provided under the ADA.

16 46. Further, Defendant has violated the Unruh Act by having, maintaining,
17 establishing and/or failing to abolish policies that discriminate against the mobility impaired,
18 which has resulted in barriers in its stores.

19 47. Plaintiff is being deterred from patronizing Defendant's stores as a result of his
20 actual knowledge of the violations stated above.

21 48. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52,
22 Plaintiff prays for judgment as set forth below.

23 **COUNT II**

24 **(Defendant is in Violation of the CDPA)**

25 49. Plaintiff re-alleges and incorporates by reference the above allegations set forth in
26 the Complaint as if fully set forth herein.

1 50. Defendant operates, within the jurisdiction of the State of California, places of
2 public accommodation and/or places to which the general public is invited and, as such,
3 Defendant is obligated to comply with the provisions of the CDPA, Cal. Civ. Code § 54, *et seq.*

4 51. The conduct alleged herein violated the CDPA, including without limitation Cal.
5 Civ. Code, § 54.1, *et seq.* and relevant provisions of the California building code regulations.

6 52. The CDPA guarantees, *inter alia*, that persons with disabilities are entitled to full
7 and equal access, as other members of the general public, to accommodations, advantages,
8 facilities, and privileges of covered entities.

9 53. Defendant has violated the CDPA by, *inter alia*, denying Plaintiff and members of
10 the proposed Class, as persons with disabilities, full and equal access to accommodations,
11 advantages and facilities offered by Defendant at its stores, as is available to other members of
12 the general public.

13 54. Defendant has violated the CDPA by, *inter alia*, failing to operate its services on a
14 nondiscriminatory basis, and failing to ensure that persons with disabilities have
15 nondiscriminatory access to its stores.

16 55. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
17 unlawfully denied access to its stores and its facilities to individuals with disabilities and acted
18 with knowledge of the effect its conduct was having on mobility impaired/wheelchair-bound
19 persons.

20 56. Defendant has violated the CDPA by being in violation of the California
21 Standards and the ADA. Plaintiff is not required to prove intent or actual damages to recover
22 minimum statutory damages under the CPDA.

23 57. Plaintiff is being deterred from patronizing Defendant's stores as a result of his
24 actual knowledge of the violations stated above.

25 58. Pursuant to the remedies, procedures, and rights set forth in California law,
26 including Cal. Civ. Code § 54, Plaintiff prays for judgment as set forth below.

RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

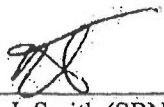
- A. that this Court certify the proposed Class;
- B. that this Court certify Plaintiff as class representatives on behalf of the Class;
- C. that this Court declare that the policies, procedures, services and facilities of Defendant's stores located in the State of California have been discriminatory and violative of the ADA, and therefore are violative of the Unruh Act and the CDPA;
- D. that this Court declare the policies, procedures, services and facilities of Defendant are discriminatory and violative of the state anti-discrimination statutes of the State of California and the California Standards;
- E. that this Court declare that Defendant's violation of California's state anti-discrimination statutes is intentional.
- F. that this Court Order injunctive relief to require Defendant to become in compliance and remain in compliance with California's state anti-discrimination statutes.
- G. that this Court award minimum statutory damages on behalf of Plaintiff against Defendant pursuant to California's state statutes identified above;
- H. that this Court award reasonable attorneys' fees and costs (including expert fees) and other expenses of suit; and
- I. that this Court awards such other and further relief as it deems necessary, just, proper, and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury on all issues which can be heard by a jury.

Dated: April 9, 2018

BRODSKY & SMITH, LLC

By: 
Evan J. Smith (SBN242352)
9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

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VERIFICATION

I, Richard Bell, hereby certify that
I am the Plaintiff in this civil action

and certify under penalty of perjury under the laws of the State
of California that the Complaint is true

and correct to the best of my knowledge, information and belief.

Date: 4/9/18

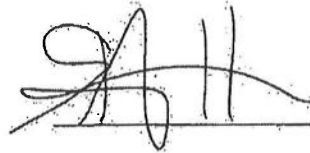


EXHIBIT B



20901381

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

RETAIL SERVICES & SYSTEMS, INC.,


**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

RICHARD BELL, on behalf of himself and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**FILED
ALAMEDA COUNTY**

APR 10 2018

CLERK OF THE SUPERIOR COURT
By  Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California - Alameda County
1225 Fallon Street Oakland, California 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

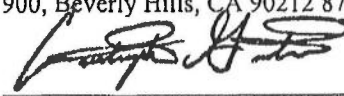
Evan J. Smith, Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 877-534-2590

CASE NUMBER:
(Número de Caso): **18900192**

DATE:
(Fecha) **APR 10 2018**

Chad Finke

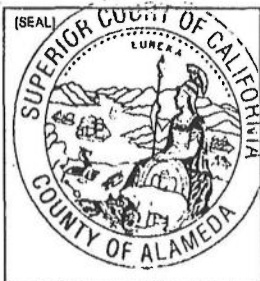
Clerk, by
(Secretario)



, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT C



20901380

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Evan J. Smith (SBN242352) Brodsky & Smith, LLC 9595 Wilshire Blvd., Suite 900 Beverly Hills, CA 90212 TELEPHONE NO.: 877-534-2590 FAX NO.: 310-247-0160 ATTORNEY FOR (Name): RICHARD BELL		FOR COURT USE ONLY FILED ALAMEDA COUNTY APR 10 2018 CLERK OF THE SUPERIOR COURT By Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Rene C Davidson Courthouse		
CASE NAME: RICHARD BELL v. RETAIL SERVICES & SYSTEMS, INC.		CASE NUMBER: RG18900192
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 2
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 9, 2018
 Evan J. Smith

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)-Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i>	Breach of Rental/Lease	Construction Defect (10)
	Contract <i>(not unlawful detainer or wrongful eviction)</i>	Claims Involving Mass Tort (40)
	Contract/Warranty Breach-Seller	Securities Litigation (28)
	Plaintiff <i>(not fraud or negligence)</i>	Environmental/Toxic Tort (30)
	Negligent Breach of Contract/Warranty	Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Enforcement of Judgment
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment (20)
Asbestos Property Damage	Collection Case-Seller Plaintiff	Abstract of Judgment (Out of County)
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Confession of Judgment <i>(non-domestic relations)</i>
Product Liability <i>(not asbestos or toxic/environmental)</i> (24)	Insurance Coverage <i>(not provisionally complex)</i> (18)	Sister State Judgment
Medical Malpractice (45)	Auto Subrogation	Administrative Agency Award <i>(not unpaid taxes)</i>
Medical Malpractice-Physicians & Surgeons	Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Professional Health Care Malpractice	Other Contract (37)	Other Enforcement of Judgment Case
Other PI/PD/WD (23)	Contractual Fraud	
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Miscellaneous Civil Complaint
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	RICO (27)
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	Other Complaint <i>(not specified above)</i> (42)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Other PI/PD/WD	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only <i>(non-harassment)</i>
Non-PI/PD/WD (Other) Tort	Writ of Possession of Real Property	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Other Commercial Complaint <i>Case (non-tort/non-complex)</i>
Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08)	Quiet Title	Other Civil Complaint <i>(non-tort/non-complex)</i>
Defamation (e.g., slander, libel) (13)	Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i>	Miscellaneous Civil Petition
Fraud (16)	Unlawful Detainer	Partnership and Corporate Governance (21)
Intellectual Property (19)	Commercial (31)	Other Petition <i>(not specified above)</i> (43)
Professional Negligence (25)	Residential (32)	Civil Harassment
Legal Malpractice	Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i>	Workplace Violence
Other Professional Malpractice <i>(not medical or legal)</i>	Judicial Review	Elder/Dependent Adult Abuse
Other Non-PI/PD/WD-Tort (35)	Asset Forfeiture (05)	Flauntin' Contracts
Employment	Petition Re: Arbitration Award (11)	Petition for Name Change
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Relief From Late Claim
Other Employment (15)	Writ-Administrative Mandamus	Other Civil Petition
	Writ-Mandamus on Limited Court Case Matter	
	Writ-Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal-Labor	
	Commissioner Appeals	

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: <u>Bell v Retail Services Systems Inc</u>	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW <u>UNLIMITED</u> CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA			
<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447) <input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)	
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no	
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability (no) asbestos or toxic tort/environmental (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input checked="" type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input type="checkbox"/> 04 Breach contract / Wrnty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 10 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 88 Partnership / Corp. governance (G) <input type="checkbox"/> 68 All other complaints (G)	
Misc, Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition	

EXHIBIT D

「 Brodsky & Smith, LLC Attn: Smith, Evan J. 9595 Wilshire Boulevard Suite 900 L Beverly Hills, CA 90212 J	「 Retail Services & Systems, Inc. J
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**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

<div style="text-align: center;">Bell Plaintiff/Petitioner(s) VS. Retail Services & Systems, Inc. Defendant/Respondent(s) (Abbreviated Title)</div>	<div>No. <u>RG18900192</u></div> <div>NOTICE OF HEARING</div>
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To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 05/29/2018 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 07/10/2018 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

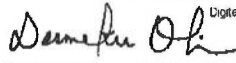
If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 04/10/2018

Chad Finke Executive Officer / Clerk of the Superior Court

By

 Digital

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/11/2018.

By

 Digital


Deputy Clerk

EXHIBIT E



20914904

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Evan Smith, (SBN 242352) Brodsky & Smith, LLC 333 E. City Avenue, Two Bala Plaza Bala Cynwyd, PA 19004 TELEPHONE NO.: (610)667-6200 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY FILED ALAMEDA COUNTY APR 24 2018 CLERK OF THE SUPERIOR COURT By  DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Alameda County 1225 Fallon Street, #109 Oakland, CA 94612-4293	
PLAINTIFF/PETITIONER: Richard Bell DEFENDANT/RESPONDENT: Retail Services & Svstems Inc.	CASE NUMBER: RG18900192
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: Total Wine. & More...

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Complaint, Summons, Alternative Dispute Resolution Packet

BY FAX

3. a. Party served: Retail Services & Systems Inc.
- b. Person Served: Linda Scanlon, agent authorized to accept. - Person Authorized to Accept Service of Process
4. Address where the party was served: 103 Yost Blvd., Ste. 101
Pittsburgh, PA 15221
5. I served the party
 - a. by **personal service**. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 04/12/2018 (2) at (time): 10:38AM
6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

Retail Services & Systems Inc.
 under: Other: Limited Liability Company

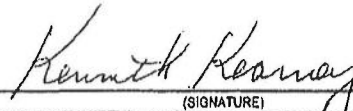
7. Person who served papers

- a. Name: Kenneth Kearney
- b. Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947
- c. Telephone number: 415-491-0606
- d. The fee for service was: \$ 175.00
- e I am:
 - (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
- Date: 04/23/2018

Kenneth Kearney

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)